



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,023	03/22/2004	Igor D.D. Curcio	915-007.082	9971

4955 7590 08/16/2010
WARE FRESSOLA VAN DER SLUYS & ADOLPHSON, LLP
BRADFORD GREEN, BUILDING 5
755 MAIN STREET, P O BOX 224
MONROE, CT 06468

EXAMINER

JAKOVAC, RYAN J

ART UNIT

PAPER NUMBER

2445

MAIL DATE

DELIVERY MODE

08/16/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/806,023

Applicant(s)

CURCIO ET AL.

Examiner

RYAN J. JAKOVAC

Art Unit

2445

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 June 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4-9, 37, 43, 45, 46, 51, 53, 54, 56-62, 64, 66 and 69-74 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-9, 37, 43, 45, 46, 51, 53, 54, 56-62, 64, 66 and 69-74 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-940)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed 06/17/2010 has been entered.

Response to Arguments

2. Applicant's arguments filed 06/17/2010 have been considered but are moot in view of the new ground(s) of rejection.

3. Applicant argues in summary that the cited prior art does not disclose receiving a repair type parameter that is indicative of a point-to-point or point-to-multipoint repair session, said repair session being of a type indicated by said repair type parameter.

4. The reference (Kawai) discloses all the limitations of a claim except a property or function and the examiner cannot determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention but has basis for shifting the burden of proof to applicant as in *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980). See MPEP § 2112- 2112.02. For example, Kawai discloses that receiving stations are added to a point-to-multipoint transmission and that these receive frames are indicative of a point-to-multipoint transmission session (see for instance Kawai, col. 2:30-50. See also abstract, col. 1:55-67, col. 2:1-25, fig. 4, col. 6:25-37, col. 7:20-47, fig. 5-6.). The receiving stations of Kawai

receive data indicative of a point-to-multipoint repair session. These sessions are repair sessions in which a receiving station requests retransmission when the receiver did not correctly receive data (Kawai, abstract, col. 1:55-67, col. 2:1-25, fig. 4, col. 6:25-37, col. 7:20-47, rebroadcast requests.). Therefore a rejection is made under 35 USC 102/103.

Claim Rejections - 35 USC § 102

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 5-7, 43, 45-46, 57, 59-61, 64, 66, 69-70 are rejected under 35 U.S.C. 102(c) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kawai in view of WO 2004/049671 to Kwang-Soon Choi et al (hereinafter Choi).

Regarding claim 1, 43, 45-46, 64, 66, 69-70, Kawai teaches a method performed by an apparatus comprised in a receiver, said method comprising:

receiving a repair type parameter that is indicative of a point-to-multipoint repair session, a point-to-point repair session or both (Kawai, abstract, col. 1:55-67, col. 2:1-25, fig. 4, col. 6:25-37, col. 7:20-47, fig. 5-6. See Choi pg. 6, packet type field indicating point-to-point or point-to-multi-point transmission.),

wherein said repair session is requested at least by said receiver if said receiver did not correctly receive data sent to a plurality of receivers including said receiver in a transmission session (Kawai, abstract, col. 1:55-67, col. 2:1-25, fig. 4, col. 6:25-37, col. 7:20-47, rebroadcast requests.), and

wherein in said repair session, at least a part of said data sent to said plurality of receivers in said transmission session is sent at least to said receiver that requested said repair session (Kawai, abstract, col. 1:55-67, col. 2:1-25, fig. 4, col. 6:25-37, col. 7:20-47, data rebroadcast.), and

receiving data in said repair session, said repair session being of a type indicated by said repair type parameter (Kawai, abstract, col. 1:55-67, col. 2:1-25, fig. 4, col. 6:25-37, col. 7:20-47, rebroadcasted data is received. See Choi pg. 6, packet type field indicating point-to-point or point-to-multi-point transmission.).

It would have been obvious to one of ordinary skill in the art to combine the teachings of Choi with the teachings of Kawai in order to define a transmission method (Choi, pg. 16, see also fig. 9, packet type fields.).

Regarding claim 57, Kawai teaches the method according to claim 1, wherein said repair type parameter is communicated before or during the establishment of said transmission session (Kawai, col. 1:35 to col. 2:17, col. 4:15-67, establishment of return channel.).

Regarding claim 5, 59, Kawai teaches the method according to claim 1, wherein said data is transmitted in said transmission session to said plurality of receivers in a broadcast or multicast operation (Kawai, abstract, col. 1:55-67, col. 2:1-25, fig. 4, col. 6:25-37, col. 7:20-47.).

Regarding claim 6, 7, 60-61, Kawai teaches the method according to claim 1, wherein said data transmitted in said transmission session is at least one of streaming data and real-time data (Kawai, abstract, col. 1:55-67, col. 2:1-25, fig. 4, col. 6:25-37, col. 7:20-47.)

7. Claims 4, 58, 71-74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawai.

Regarding claim 4, 58, Kawai teaches the method according to claim 1. It would have been obvious to combine transmitting data from a sender to a plurality of receivers over an IP based network with Kawai since Kawai teaches transmitting data from a sender to a plurality of receivers and transmitting over an IP network is an obvious variation of transmission protocol.

Claims 71-74 are rejected for similar rational as claims 4 and 58. Further, the limitations of claims 71-74 are only found in the nonfunctional descriptive material and are not functionally

involved. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability. See *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include the nonfunctional descriptive material with the claimed invention because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the descriptive material does not patentably distinguish the claimed invention.

8. Claims 8-9, 37, 51, 53-54, 56 and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawai in view of Applicant's Admitted Prior Art (hereinafter AAPA).

Regarding claims 8, 9, 51, 54, 62, Kawai teaches the method according to claim 8. AAPA teaches wherein said wireless network is a mobile network that at least partially implements a Multimedia Broadcast/Multicast Service as defined by a Third Generation Partnership Project (Specification, page 1, paragraph 4 discloses transmission of data over radio (i.e. wireless network) in a MBMS as defined by 3GPP.).

Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to combine wherein said wireless network is a mobile network that at least partially implements a Multimedia Broadcast/Multicast Service as defined by a Third Generation Partnership Project as taught by AAPA with Kawai in order to provide flexible and efficient

mechanisms to send common information from one sender to multiple receivers (AAPA, paragraph [0002]).

Regarding claim 37, 53, 56, Kawai teaches the method according to claim 1. AAPA teaches wherein said transmission of said data in said transmission session from said sender to said plurality of receivers is at least partially controlled by the File Delivery Over Unidirectional Transport protocol (Specification paragraph [0011], FLUTE is used in multicast networks.).

Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to combine wherein said transmission of said common data from said sender to said plurality of receivers is at least partially controlled by a File Delivery Over Unidirectional Transport FLUTE protocol as taught by applicant's admitted prior art with Kawai in order to send common data from one IP based entity to a plurality of IP based hosts as well as for the delivery of large and small files to many IP based hosts as well as for the delivery of large software updates to many IP based hosts simultaneously (AAPA, paragraph [0011]).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RYAN J. JAKOVAC whose telephone number is (571)270-5003. The examiner can normally be reached on Monday through Friday, 7:30 am to 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivek Srivastava can be reached on 571-272-7304. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ryan Jakovac/

/VIVEK SRIVASTAVA/

Supervisory Patent Examiner, Art Unit 2445